IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12745 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHD ALTAF MOH AIYUB SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12745 of 2003

MR CHETAN B RAVAL for Petitioner No. 1

MR RM CHAUHAN, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

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ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order of detention passed by the Police Commissioner, Ahmedabad City, on 21st June, 2003 in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner as a "bootlegger" within the meaning of PASA Act and directing the detention of the petitioner. In pursuance of the said order the petitioner came to be detained in custody on 21st June, 2003.

2. The grounds served upon the petitioner and as placed on record clearly indicate that the detaining authority took into consideration the fact of registration of crime against the petitioner on 18th June, 2003 under Sections 66(b), 65(a),(e), 81 and 116(1)(b) of the Bombay Prohibition Act, whereby it was alleged that the petitioner was found in possession of foreign liquor worth of Rs.66,200. In addition to this, the detaining authority has also relied upon two in-camera statements as recorded by the by sponsoring authority on 18th June, 2003 and as verified by the detaining authority on 20th June, 2003, revealing incidents occurred on 6th May, 2003 and 10th June, 2003. From the above material, the order, impugned in this petition, came to be passed by the detaining authority.

3. Learned Advocate Ms.Banna Datta for the petitioner and learned A.G.P. Mr Chauhan for the respondents were heard at length. The affidavit-in-reply as placed on record by the learned AGP Mr Chauhan of the detaining authority is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the AGP, it appears that the matter can be disposed of on the ground whether on the facts of the case it can be said that the activities of the petitioner were prejudicial to the maintenance of public order. The fact of registration of crime against the petitioner under Bombay Prohibition Act could hardly constitute an activity on the part of the petitioner to be prejudicial to the maintenance of the public order especially when the case was pending. Though the the detaining authority has further relied upon two in-camera statements as recorded by the sponsoring authority to reach subjective satisfaction as to the activities of the petitioner to be prejudicial to the maintenance of the public order. Now it is settled

that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to the public order. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of public order whenever the order of detention is questioned on that ground it becomes the duty of the Court to apply this test to find out whether the objectionable activity upon which the order of detention is grounded fall under the classification of being prejudicial to the public order or false under the classification to the extent only to be the problem under law and order. Therefore, it is the length, magnitude and the intensity of the questionable activity of a person is vitally important to decide whether the alleged activities are prejudicial to the maintenance of public order. The subjective satisfaction of the detaining authority so far as the same is grounded upon the in-camera statements is concerned, there are two incidents occurred on 6th May, 2003 and 10th June, 2003. The incident which occurred on 6th May 2003 reveals that while the witness was passing through the road at Mirzapur the petitioner and his associates approached the witness and conveyed that the witness was watching the bootlegging activity and informing the police about such activities. On refusal by witness, the witness was beaten. Though the crowd was gathered but none dared to rescue the witness on account of threat of the petitioner and his associates. The surrounding shop keepers had closed their shops and the traffic was disrupted. In the other incident which occurred on 10th June, 2003 the witness alleged that when the witness was at his house at 8 PM in the night the petitioner and his associates came to the house of the witness on scooter with boxes of foreign liquor. The witness was directed to conceal and keep the said boxes at his house. When the witness refused to act accordingly, the petitioner and his associated were excited and the witness was dragged on the road from his house and was beaten. On shouting for help by the witness though the crowd was gathered but none dared to rescue the witness. By act of supplication the witness could escape but on account of the threat of the petitioner, the crowd was dispersed. Terror and fear was created in the locality. Taking into consideration these two incidents on their face value and scrutinising minutely it transpires that the activities were directed towards each individual witness not affecting the public at large. It is difficult to comprehend from the above fact that the activities of the petitioner, which is

revealed through in-camera statement were in any manner prejudicial to the maintenance of the public order. At the most, it could be said that this may be the problem of law and order. Therefore, in this view of the matter, the order in question is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 21.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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